



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R05-OAR-2021-0885; FRL-9523-02-R5]

**Air Plan Approval; Wisconsin; Redesignation of the Wisconsin
Portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin
Area to Attainment of the 2008 Ozone Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) finds that the Chicago-Naperville, IL-IN-WI area (Chicago area) is attaining the 2008 ozone National Ambient Air Quality Standard (NAAQS or standard) and, in response to a request from the Wisconsin Department of Natural Resources (Wisconsin or the State), is redesignating the Wisconsin portion of the area to attainment for the 2008 ozone NAAQS, because the State has met the statutory requirements for redesignation under the Clean Air Act (CAA). EPA is approving, as a revision to the Wisconsin State Implementation Plan (SIP), the State's plan for maintaining the 2008 ozone NAAQS through 2035 for the Wisconsin portion of the Chicago area. EPA finds adequate and is approving Wisconsin's 2030 and 2035 volatile organic compound (VOC) and oxides of nitrogen (NO_x) Motor Vehicle Emission Budgets (Budgets) for the Wisconsin portion. Finally, pursuant to section 110 and part D of the CAA, EPA is approving the enhanced Inspection/Maintenance (I/M) program certification included in

Wisconsin's December 3, 2021 submittal, because it satisfies the serious enhanced I/M requirements for the Wisconsin portion. EPA proposed to approve this action on February 7, 2022, and received no comments.

DATES: This final rule is effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2021-0885. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Michael Leslie, Environmental Engineer at (312) 353-6680 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West

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SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

I. Background Information.

On February 7, 2022 (87 FR 6006), EPA proposed to find that the Chicago area is attaining the 2008 ozone NAAQS, in response to a request from the Wisconsin, and is redesignating the Wisconsin portion of the area to attainment for the 2008 ozone NAAQS, because the State has met the statutory requirements for redesignation under the CAA. The Wisconsin portion of the Chicago 2008 ozone area consists of the portion of Kenosha County bounded by the I-94 corridor and the area east to Lake Michigan (Wisconsin portion). Wisconsin submitted this request on December 3, 2021. EPA proposed to approve, as a revision to the Wisconsin SIP, the State’s plan for maintaining the 2008 ozone NAAQS through 2035 for the Wisconsin portion. EPA also proposed to approve and find adequate Wisconsin’s 2030 and 2035 VOC and NO_x Budgets for the Wisconsin portion. Finally, pursuant to section 110 and part D of the CAA, EPA proposed to approve the enhanced I/M certification, because it satisfies the serious enhanced I/M requirements for the Wisconsin portion. The public comment period for this proposed rule ended on March 9, 2022. EPA received no comments on the proposal.

II. Final Action.

EPA is determining that the Chicago area is attaining the 2008 ozone NAAQS, based on quality-assured and certified monitoring data for the 2019-2021 period. EPA is approving enhanced I/M revision included in Wisconsin's December 3, 2021 submittal because Wisconsin demonstrated that its current I/M program meets the applicable enhanced I/M performance standard requirements in 40 CFR part 51, subpart S, for the 2008 ozone NAAQS. EPA has determined that the Wisconsin portion of the Chicago area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus changing the legal designation for the Wisconsin portion of the Chicago-Naperville, IL-IN-WI area from nonattainment to attainment for the 2008 ozone NAAQS. EPA is also approving, as a revision to the Wisconsin SIP, the State's maintenance plan for the area. The maintenance plan is designed to keep the Wisconsin portion of the Chicago area in attainment of the 2008 ozone NAAQS through 2035. Finally, EPA is finding adequate and approving the newly established 2030 and 2035 Budgets for the Wisconsin portion of the Chicago area.

In accordance with 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), EPA finds there is good cause for this action to become effective immediately upon publication. The immediate effective date for this action is authorized under 5 U.S.C. 553(d)(1).

Section 553(d)(1) of the APA provides that final rules shall not become effective until 30 days after publication in

the Federal Register "except . . . a substantive rule which grants or recognizes an exemption or relieves a restriction." The purpose of this provision is to "give affected parties a reasonable time to adjust their behavior before the final rule takes effect." *Omnipoint Corp. v. Fed. Commc'n Comm'n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). However, when the agency grants or recognizes an exemption or relieves a restriction, affected parties do not need a reasonable time to adjust because the effect is not adverse. EPA has determined that this rule relieves a restriction because this rule relieves sources in the area of Nonattainment New Source Review (NNSR) permitting requirements; instead, upon the effective date of this action, sources will be subject to less restrictive Prevention of Significant Deterioration (PSD) permitting requirements. For this reason, EPA finds good cause under 5 U.S.C. 553(d)(1) for this action to become effective on the date of publication of this action.

III. Statutory and Executive Order Reviews.

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of

requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b) (1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b) (2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: March 29, 2022.

Debra Shore,
Regional Administrator, Region 5.

For the reasons stated in the preamble, 40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.2585 is amended by adding paragraph (ss) to read as follows:

§ 52.2585 Control strategy: Ozone.

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(ss) *Redesignation*. Approval — On December 3, 2021, Wisconsin submitted a request to redesignate the Wisconsin portion of the Chicago-Naperville, IL-IN-WI area to attainment of the 2008 ozone National Ambient Air Quality Standards (NAAQS). As part of the redesignation request, the State submitted a maintenance plan as required by section 175A of the Clean Air Act (CAA). Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision in eight years as required by the CAA. The ozone maintenance plan also establishes 2030 and 2035 Motor Vehicle Emission Budgets (Budgets) for the area. The 2030 Budgets for the area are 0.54 tons/day for volatile organic compounds (VOC) and 0.85 tons/day for oxides of nitrogen (NO_x). The 2035 Budgets for the area are 0.47 tons/day for VOC and 0.75 tons/day for NO_x. Wisconsin also submitted a revision to its State Implementation Plan to satisfy the Enhanced

Inspection/Maintenance recertification for the 2008 ozone NAAQS requirements of the CAA.

PART 81 - DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

4. Section 81.350 is amended by revising the entry for "Chicago-Naperville, IL-IN-WI" in the table entitled "Wisconsin-2008 8-Hour Ozone NAAQS [Primary and Secondary]" to read as follows:

§81.350 Wisconsin.

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WISCONSIN-2008 8-HOUR OZONE NAAQS
[Primary and Secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Chicago-Naperville, IL-IN-WI: ²	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]	Attainment		Serious.
Kenosha County (part):				
The portion of Kenosha County bounded by the Lake Michigan shoreline on the East, the Kenosha County boundary on the North, the Kenosha County boundary on the South, and the I-94 corridor (including the entire corridor) on the West				
* * * * *				

¹This date is July 20, 2012, unless otherwise noted.

²Excludes Indian country located in each area, unless otherwise noted.

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